



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable G. A. Neal  
County Auditor  
Ellis County  
Waxahachie, Texas

Dear Sir:

Opinion No. '0-5863  
Re: Whether the Permanent  
Improvement Funds of the  
County can be used to buy  
property for housing road  
machinery and equipment;  
and a related matter.

Your letter of February 9, 1944, requesting the  
opinion of this department on the questions stated therein  
reads in part as follows:

"...  
"Ellis County has assessed and collected  
a Permanent Improvement Tax, as provided under  
the Statute. At present we have, in the Per-  
manent Improvement Fund, several thousand dol-  
lars.

"The County Commissioners in the different  
precincts are renting, from individuals, a place  
where the road machinery and other equipment may  
be kept. At the last regular meeting of the  
Commissioners' Court, an order was passed, pro-  
viding that a certain amount of this Permanent  
Improvement Fund be used to buy certain property  
for the housing of each particular Commissioner's  
road machinery; with the understanding, however,  
that the Commissioner's precinct pay to the County,  
a reasonable amount each month as rent.

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"The two questions to be answered are:

"(1) Can the County use the Permanent Improvement Funds to buy this property?

"(2) If so, would the Commissioner's precinct be required, under the law, to pay the County rent on the above named property?

". . . ."

From the information contained in your original request and two later communications received from you relative thereto, it is apparent that the Commissioners' Court levied a tax and designated it for "permanent improvements" without specifying that it was to be expended for any particular permanent improvement as is usually done. Therefore, it follows that the Permanent Improvement Fund of the county may be expended for any "permanent improvements" which the Commissioners' Court may legally see fit to make. Having reached this conclusion, we now consider your first question.

We think there can be no question about a building, including the land upon which it is erected and such additional land as may be necessary to effectuate the purpose for which the building is to be used, purchased or erected for the purpose of housing the county's valuable road machinery, equipment, tools and supplies used for road building and maintenance purpose is a "public permanent improvement" within the meaning of that term as used in Section 9, Article VIII of our Constitution, limiting the annual rate of taxation which may be levied by the county for such purpose, and in Article 2352, Vernon's Annotated Civil Statutes, authorizing Commissioners' Courts to levy a maximum tax for such purpose.

You are therefore advised that it is our opinion that your first question, under the facts submitted and as we understand them, should be answered in the affirmative, and it is so answered.

You are further advised that the Road and Bridge Fund of the county may also be legally expended for such purpose, since the very purpose of the contemplated expenditure is for the protection and preservation of road building machinery, equipment, tools and supplies, all of

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which are essential to the construction and maintenance of the county roads and bridges, the very purpose for which said fund is created under both the Constitution and statutory provisions cited above.

We now consider your second question.

The courts of this State have often held that Commissioners' Courts have no authority except that conferred by statute or by the Constitution and those powers necessarily implied therefrom. We know of no law that would authorize the Commissioners' Court to exact rental from each Commissioner's precinct for use of the building proposed to be purchased or erected by the county for the purposes heretofore stated, therefore, such rental may not be collected.

In connection with the foregoing answers to the questions propounded by you, it is noted, that you state in your letter of April 1, 1944, supplementing your letter, a part of which is quoted above, you state in part as follows:

"The Budget does not provide for the purchase of buildings for the housing of County machinery."

As we understand your foregoing statement, you state in effect, that no provision is contained in the County Budget providing for the expenditure of funds of the county for the purpose of erecting or buying property for housing road machinery, equipment, tools and supplies. Generally speaking, no expenditure of the funds of the county shall be made except in strict compliance with the Budget as adopted by the Court, except emergency expenditures, in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by the reasonable diligence, thought and attention, have been included in the original budget. (Art. 689a-11, V. A. C. S.).

It will be noted as stated above that generally speaking no expenditure of the funds of the County shall be made except in strict compliance with the Budget as adopted by the Court except to emergency expenditures, in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by the reasonable diligence, thought

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and attention, have been included in the original Budget. Before the above mentioned expenditures can be made legally, such expenditures must be provided for in the Budget. Whether a grave public necessity now exists authorizing the Commissioners' Court to amend the Budget to provide for the above mentioned expenditures is a question to be determined solely by the Commissioners' Court under the existing facts and Art. 689a-11, V. A. C. S.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*  
Ardell Williams  
Assistant

AW:fo

APPROVED AND FORWARDED  
*G. F. Blackburn*  
G. F. Blackburn  
ATTORNEY GENERAL OF TEXAS

